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# **Policing the Seas: Building Constabulary Maritime Governance in the Horn of Africa – the Case of Djibouti and Kenya<sup>1</sup>**

**Robert McCabe**

## **Abstract**

The upsurge of Somali based maritime piracy after 2005 resulted in considerable international activity in the Horn of Africa, ranging from naval missions to capacity building projects. It also ushered in a new focus by regional states on the dangers as well as the opportunities associated with the sea. In Kenya and Djibouti, two states directly impacted by piracy, this resulted in a strategic shift toward the ocean, breaking with a historical land-centric security approach, in an attempt to reform their domestic maritime sectors and coastal governance architectures by capitalising on assistance from external capacity building providers. This article adds rigor to the field of maritime security studies by zooming in on how two key littoral states have reformed their domestic maritime sectors following a decline in acts of piracy. It explores important questions such as how have Djibouti and Kenya approached maritime governance historically? How are their territorial maritime spaces delineated and defined? How has the phenomena of piracy influenced the development of coastal governance in both countries? Has this led to innovative practices? Can these practices be applied in other jurisdictions? Finally, what has been the impact of external capacity building assistance on the development of both Djibouti and Kenya's maritime sector and respective approaches to coastal governance and enforcement? This research is significant as it sheds new light on the limitations and challenges facing domestic maritime security sectors in Africa, but also highlights new ways states can improve and build maritime constabulary governance through international partnerships, capacity development and embracing the blue economic agenda using the cases of Djibouti and Kenya as archetypal models.

**Keywords:** *maritime security, governance, policing, piracy, Africa, Kenya, Djibouti, navy, coastguard, private security, capacity building*

## **Introduction and context**

The Horn of Africa and the wider western Indian Ocean has emerged as a region of geo-strategic importance and a paradigmatic case study of the contemporary maritime security environment.<sup>1</sup> Most regional states struggle with capacity issues relating to enforcing maritime security including obsolete or absent naval assets, inefficiencies in training approaches, limited

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manpower, weak institutional and judicial structures, and insufficient investment in monitoring and surveillance platforms. This means that littoral states have limited capability to govern, patrol or monitor their territorial waters, let alone assist in maritime security activities outside of these coastal zones. This is due, in part, to a historical preponderance toward land-based security threats, which means that the maritime governance structures of many western Indian Ocean states are not well organised, and their capacities for enforcing maritime laws, deterring crime and monitoring maritime activities remain limited.

This incapacity was magnified when Somali pirates began hijacking merchant vessels with near impunity between 2005 and 2012 extending their reach beyond Somali waters into Djiboutian and Kenyan maritime zones and within 150 miles of South African and Pakistani waters and 250 miles off India.<sup>2</sup> Through a combination of field research, meetings and non-structured interviews with state and private maritime sector actors in the Horn of Africa, alongside analysis of contemporary policy papers, academic articles and reports, this article explores for the first time the development of the modern maritime security sector and constabulary governance approaches in Djibouti and Kenya in the aftermath of the Somali piracy crisis. The experience of Somali piracy resulted in a strategic shift toward the sea in both countries and attempts to reform their respective domestic maritime sectors and coastal governance architectures by capitalising on assistance from external capacity building providers.

Much of the academic literature to date that focuses on the Horn of Africa and maritime security has concentrated on Somalia and the phenomena of piracy. Far less has been written on how littoral states have been impacted and influenced and less again on how domestic maritime security sectors and policy has adapted and evolved in the period since the decline in acts of piracy. Djibouti and Kenya have been selected as they represent two paradigmatic cases that have not been considered collectively in previous research. Both states share land borders with Ethiopia and Somalia, and have been impacted in different ways by maritime insecurity off the Horn of Africa. As Djiboutian President Ismail Guelleh recently commented during talks with Kenya on strengthening security and trade links, “what happens in Somalia has an immediate impact on all of us”.<sup>3</sup>

The international response to piracy and the extension of this response to broader strategic and geopolitical interests, has allowed both states to benefit (both materially and epistemologically) from international capacity building assistance, partnerships and investment. This has resulted in greater policy level engagement with issues of maritime governance and blue economic development not seen before in the history of both states. Importantly, lessons from both these countries can represent an archetype for how other African maritime security sectors with limited institutional and enforcement capacities (such as states in the Gulf of Guinea) can better capitalise on external assistance and build more efficient policing capabilities and governance structures in their territorial waters.

In Kenya, this maritime security sector reform initially focused on procuring physical assets to assist the Navy and build judicial capacities to arrest and prosecute pirates. Ultimately, it evolved into the adoption, development and implementation of the blue growth agenda at a policy level, of which coastal security, governance and development constituted key elements.<sup>4</sup> The creation of a new coastguard service to “police Kenya’s territorial waters and ensure that the nation fully benefits from its water resources” exemplified this shift.<sup>5</sup> In Djibouti, maritime security sector reform and capacity building activities developed more as a source of economic benefit than of a framework to build a strong navy, coastguard or judiciary evidenced by the ambitious government driven development strategy known as ‘Djibouti Vision 2035’.<sup>6</sup>

This article will firstly explore the historical context to Kenya and Djibouti’s approach to governing their maritime spaces and provide a brief outline of how these spaces are delineated and disputed. Next, the impact of Somali based piracy on the development of coastal governance in both Djibouti and Kenya is considered including the emergence of innovative coastal governance practices, such as the changing relationship between national law enforcement agencies and private security providers, as well as legislative reforms. This is followed by an analysis of the impact of external capacity building activities on both Djibouti and Kenya’s maritime sector development and approaches to coastal governance and policing while highlighting lessons for other comparable maritime sectors.

### ***Historical context***

Historically, most coastal African states have focussed on land-based security challenges, building large armies at the neglect of a naval or coastguard capacity. According to Timothy Walker, "most African states lack a substantial navy or a coastguard and many conflicts have spilled over land boundaries or land borders...so...there has always been a focus on what is happening on land".<sup>7</sup> In post-colonial Kenya, land-based security challenges dominated the political and military agenda resulting in a neglect of the challenges and opportunities provided by ocean spaces as well as an overtly bureaucratic approach to governance.<sup>8</sup> This bureaucratic complexity resulted in a disconnect between issues of maritime governance and coastal management. For example, in 2001, the Coast Development Authority of Kenya highlighted that "in the past, important resources that had symbiotic relationships with others were managed separately. This has been the genesis of coastal management issues. These sector-oriented efforts...have failed to recognize the relationships and interconnectedness of the coastal environment".<sup>9</sup>

Djibouti, in contrast, has traditionally relied on foreign powers, such as its former colonial ruler France, for deterrence against neighbouring state aggression and for its maritime security needs. In more recent times, Djibouti's relatively stable security situation in comparison to neighbouring states as well as its geostrategic location on Bab-el-Mandeb has made it an attractive hub for international investment and geopolitical activity, initially under the pretext of counter-piracy operations. In addition, the benefits of developing its maritime sector was motivated by the economic opportunities resulting from the aftermath of the 1998–2000 war between Ethiopia and Eritrea, the rapid economic transformation in Ethiopia and increased foreign military activity in the region in the aftermath of the attacks on the United States on 11 September 2001.<sup>10</sup> These arrangements were primarily driven by the revenue generated from leasing maritime real estate to foreign powers and, to a lesser extent, the residual maritime capacity development and training that these better equipped and more experienced international forces can offer. It is estimated that hosting foreign military infrastructure generates around US\$300 million in annual income for Djibouti.<sup>11</sup>

### ***Definitions and concepts***

Maritime governance as a concept is not clearly defined. Thakur and Van Langenhove's definition of governance as a "complex of formal and informal institutions, mechanisms, relationships, and processes between and among states, markets, citizens and organizations, both inter and non-governmental..." articulates the broader complexity of governance more generally.<sup>12</sup> In a maritime context, it can be further articulated as a "set of functions shaped by long-term programs and the resources needed to finance them" that address both threats to national security as well as more benign non-traditional threats.<sup>13</sup> Struett and Nance outline how the difficulties in communication between actors with different professional pedigrees highlights the limitations and challenges that global governance institutions face when they need to bring together expertise from legal, prosecutorial, police, naval, and merchant marine actors to find solutions to international problems.<sup>14</sup>

However, this complexity is also true at a local level where, in the case of Kenya for example, several government agencies, maritime enforcement bodies and environmental management authorities have traditionally been involved in addressing constabulary maritime security problems alongside resource-user groups and external stakeholders.<sup>15</sup> Bateman's conceptualisation of maritime security governance also highlights this complexity. He describes maritime security governance as more diverse than the traditional one of defence against military threats and the protection of national interests and sovereignty at sea.<sup>16</sup> The concept has expanded to include non-traditional security challenges, such as maritime terrorism, natural disasters, climate change, illegal fishing, marine pollution, maritime safety and the smuggling of drugs, arms and people.<sup>17</sup>

In the context of this paper, constabulary maritime governance is understood as the procedures and practices of governing and policing coastal spaces against non-traditional security threats, in particular territorial waters i.e. at the interface between the land and sea. As Bueger and Edmunds outline, "Most maritime security issues cannot simply be understood and addressed as problems of the marine environment alone. Instead, they are invariably interlinked with challenges on land as well".<sup>18</sup> This also relates to the capability and roles of navies, coastguards and other local maritime enforcement bodies, which in the case of East Africa have few, if any capabilities beyond a policing function.<sup>19</sup>

### *Coastal maritime spaces*

To effectively analyse how both states approach constabulary governance, it is useful to briefly consider how these spaces are delineated. Both Djibouti and Kenya are signatories of the UN Convention on the Law of The Sea 1982 (UNCLOS) and therefore claim a 12-nautical-mile territorial sea, a 24-nautical-mile contiguous zone, and a 200-nautical-mile Exclusive Economic Zone (EEZ), which in both cases extends into strategic sea-lines of communication. Kenya has a coastline of about 650km on the western Indian Ocean, and an EEZ with a total area of over 110,000 km<sup>2</sup>.<sup>20</sup> Large portions of Kenya's coastline are remote and lack reliable communication infrastructure, mainly attributed to lack of connection to the national power grid.<sup>21</sup> Apart from UNCLOS, there are two additional cross-sectoral maritime governance policy approaches: Marine Protected Areas (MPAs) and Integrated Coastal Zone Management (ICZM). The MPA's are currently divided into four marine National Parks and six marine National Reserves.<sup>22</sup> The marine parks are fully protected with no extraction or fishing allowed whereas the marine reserves allow restricted fishing rights under specific conditions. The ICZM approach more broadly can be considered a dynamic process for the sustainable management and use of coastal zones, taking into account the fragility of coastal ecosystems, the diversity of activities and uses, the maritime orientation of certain activities and uses and their impact on both the marine and land parts.<sup>23</sup> The Kenyan policy highlights that the coastal and marine environment is a "limited spatial area" and a "distinctive system" in which a range of environmental and socio-economic interests interconnect.<sup>24</sup>

Along with Eritrea and Yemen, Djibouti has direct access to the strategic Bab-el-Mandeb strait. This strait controls southern access to the Red Sea and also the Suez Canal and is one of the busiest commercial channels in the world with the potential for up to 100 ships per day passing through the expanded waterway.<sup>25</sup> Djibouti's coastline is just 314 km long, much of which is in the Gulf of Tadjourah. North of the Gulf of Tadjourah, there are several small islands and inlets. The country's main ports are located in Djibouti City and Tadjourah, which hosts' two facilities built with Chinese Funds and inaugurated in June 2017. Djibouti is also currently developing Africa's largest international free trade zone close to its major ports as part of a 10-year plan under the governance of the Djibouti Ports and Free Zone Authority. Djibouti also has four

designated MPA's covering between 35 to 447 square kilometres, which safeguard areas of biodiversity including coral reefs, mangroves, sea turtle nesting beaches and unique oceanographic features.<sup>26</sup>

### ***Maritime boundary disputes***

Both nations have ongoing maritime boundary disputes with neighbouring states that impact on how coastal governance and related issues are approached and implemented. As Okonkwo highlights, maritime boundaries management cuts across multiple stakeholders including government agencies such as the customs, immigration, police, armed forces, ministry of agriculture, drug enforcement agencies, products regulatory agencies, but also shipping companies; port authorities, maritime institutions, international business companies and regional and international organizations.<sup>27</sup> Not only do maritime boundary disputes, therefore, add complexity to the governance of maritime spaces, but deepening boundary uncertainties also inhibit maritime security cooperation with the potential for regional instability.<sup>28</sup>

Djibouti has challenged the geographical coordinates referenced by Somalia on the demarcation of its EEZ, which, it is claimed, encompasses waters under the sovereignty and jurisdiction of the Republic of Djibouti. Furthermore, Djibouti has a long-standing border dispute with Eritrea, which also has a maritime dimension as both countries claim the Island of Dumeira close to the Bab-el-Mandeb. The situation was exacerbated by the withdrawal of Qatari peacekeepers in 2017, which has led to fears of an escalation in tensions.<sup>29</sup> The dispute also extends to grievances over the loss of significant revenue for Eritrea following Ethiopia's decision to route all of its import and export traffic to Djiboutian ports in 1999, which has created competition between the major ports of both countries.<sup>30</sup>

In Kenya, coastal maritime governance is complicated by two major maritime boundary disputes with neighbouring states both relating to some extent with access to ocean resources and the capacity to exploit such opportunities. The first dispute is with Somalia over determination of the maritime boundary including the continental shelf beyond 200 nautical miles in the Indian Ocean and, the second, with Uganda concerning Migingo Island on Lake Victoria. The dispute filed by Somalia in 2014 sought to vacate a Memorandum of Understanding signed in 2009 over a



roughly 100,000 km<sup>2</sup> area of water in the Indian Ocean, which both countries contend is part of their maritime territory. In February 2017, the International Court of Justice (ICJ) rejected Kenya's preliminary objections and agreed that it had jurisdiction to rule on Somalia's application. The contested area is purported to contain oil and natural gas reserves and Kenya has already reportedly granted hydrocarbon exploration and exploitation rights to several companies, which may be affected by the ICJ ruling.<sup>31</sup> Notably, the Kenyan Navy has been actively patrolling this contested area and therefore upholding its sovereignty of the EEZ borderline along the parallel of latitude since independence. Somalia, in contrast, has no ships and has not patrolled the area, which is likely to weaken its claim.<sup>32</sup> Understanding the complex maritime political and spatial geography of both states allows for a more informed analysis of how approaches to maritime governance been impacted and influenced by the escalation of Somali based piracy.

### **Impact of Somali based piracy on the development of coastal governance**

To some extent, many of the developments in the maritime sector at a local level in the western Indian Ocean have been influenced by the securitisation of Somali based piracy after 2005 and the rise of a regional maritime security agenda.<sup>33</sup> As Lehr attests, "the criminal phenomenon of piracy was securitised and elevated to a threat to the national security not only of the rim countries of the Somali Basin but also to the national security of nations depending on seaborne trade for their 'just enough, just in time' economies".<sup>34</sup> This resulted in considerable international attention and activity ranging from naval missions to capacity building projects, but also a new focus by regional states on the dangers as well as the opportunities associated with the sea. This included benefitting from large amounts of capital investment and human resource development in the form of capacity building and infrastructural projects, but also a revision of domestic legislation and greater strategic engagement with maritime issues, including security sector reform and harnessing blue economic potential. The influx of Privately Contracted Armed Security Personnel (PCASP) transiting through coastal jurisdictions also resulted in some littoral states developing innovative ways to police their waters. This reinforced the need for regional states to have an accurate maritime situational picture and build the requisite capacity to govern their coastal maritime spaces.

In Kenya, the upsurge of maritime piracy in the western Indian Ocean after 2005 was central in prompting policymakers to recognize the importance of the sea as both a source of economic and political insecurity but also as a prospective arena for development. At its height, it is estimated that piracy cost the Kenyan shipping industry between US\$300 million and US\$400 million per annum.<sup>35</sup> Most significant was the reduction in cruise liner visits to Kenyan ports and anchorages, which dropped from 35 arrivals in 2008 to zero visits in 2012 costing the Kenyan exchequer an estimated US\$15 million per annum.<sup>36</sup> One of the core constabulary governance issues that emerged was a lack of Maritime Domain Awareness (MDA) structures and the need to improve capacity to enforce maritime laws and create a common knowledge platform for maritime law enforcement agencies.<sup>37</sup> This has focussed primarily on strengthening the criminal justice response to prosecute for maritime crimes through technical assistance and capacity building, but also knowledge and equipment transfer to bolster enforcement capacity.

Somali piracy also had a negative impact on Djibouti's maritime industry, the financial sector and international trade. In addition, the upsurge of piracy underlined Djibouti's outdated maritime legislation, which needed to be revised and updated. Somali piracy cost the Djiboutian economy an estimated US\$40-60 million per annum chiefly due to a negative impact on merchant trade in the form of reduced port utilizations and increased insurance premiums for vessels visiting Djibouti.<sup>38</sup> These extra costs were amplified by the inclusion of Djibouti in Lloyds List Joint War Committee's 'Hull War, Strikes, Terrorism and Related Perils Listed Areas' in 2007 which negatively impacted on a key source of revenue for the small state. Somali based piracy combined with wider regional conflict and instability also contributed to human trafficking challenges by shifting some of the smuggling routes closer to Djiboutian coastlines, with an estimated 100,000 people from Eritrea, Ethiopia, and Somalia transiting through Djibouti each year, mostly heading to Saudi Arabia, Yemen, or other Middle Eastern countries.<sup>39</sup>

### ***Responses to piracy***

Kenya adopted a more proactive role and became the first regional state to accept Somali pirates for prosecution and detention following several bilateral agreements with the United States and European Union. In addition, amendments were made to the Kenyan Penal Code and the Merchant Shipping Act 2009 was drafted, which recognised maritime piracy as a crime within

Kenyan jurisdiction even when conducted in international waters. By January 2013, there were 64 piracy suspects remanded, 74 convicted, 17 acquitted and 10 repatriated to Somalia.<sup>40</sup> Piracy also, ultimately, precipitated the development of a Coastguard in Kenya for the first time in the history of the state, which, as is discussed later in more detail, is mandated to protect Kenya's internal and coastal waters from acts of terrorism, piracy, illegal fishing, human and drug trafficking among other maritime crimes.<sup>41</sup>

In a comparable manner, Somali based piracy also challenged Djibouti with regard to the jurisdictional ambiguity of how to manage suspected pirate vessels, the detention of suspects, and the logistics of prosecution. The existing penal code prevents national jurisdiction over extra-territorial acts of piracy except when the alleged act involves an attack on a Djiboutian flagged vessel as under UNCLOS. Despite this, Djibouti has revised its domestic legislation in order to more effectively contribute to regional counter-piracy operations including adapting its penal code in accordance with the Djibouti Code of Conduct. Djibouti has also functioned as a launching point and supply and logistics base for international navies involved in counter-piracy missions. This has acted as a catalyst for a deepening array of cooperation initiatives, in turn enhancing the strategic importance of Djibouti.<sup>42</sup>

In addition, the escalation of piracy provided an opportunity for Djibouti to exploit the current state of relative peace and stability as well as its geostrategic location to generate investment from international states engaged in counter-piracy, and other maritime security operations, but also states looking to gain a foothold in the region in terms of military and economic power-projection. For example, China's burgeoning military footprint in Djibouti was initially under the explicit pretext of counter-piracy operations, but more recently has evolved beyond a "naval-replenishment facility" to a "large and technologically advanced bastion with state-of-the-art underground facilities".<sup>43</sup> This is a clear example of Beijing prioritising its growing economic and security interests in Africa and the Indian Ocean, and advancing the "massive and geopolitically ambitious" Belt and Road Initiative.<sup>44</sup> This international attention catalysed by piracy in the first instance, led to a number of adaptations and innovations in coastal governance for both Kenya and Djibouti ranging from new public/private partnerships, a re-examination of

the roles of navies versus coastguards and the formation of new government bodies and enforcement agencies.

### **Coastal governance: adaptations and innovations**

In terms of coastal governance, in the period after 2012 following a reduction in piracy attacks, the roles of navies, coastguards and private security providers became increasingly blurred and a new focus emerged on crosscutting responsibilities, exploiting capacity building opportunities and securing offshore resources. For example, in Djibouti, opportunities presented by larger powers' maritime security activities and geopolitical manoeuvring meant that Djibouti maintained a largely symbolic navy but a more functional Coastguard while also outsourcing some of its constabulary maritime governance responsibilities to a private security company.<sup>45</sup> Whereas Kenya has sought to expand the Navy through assistance from external capacity providers and established an indigenous Coastguard service for the first time in the history of the state. These moves reflect the “messiness” of contemporary coastal governance in Kenya and Djibouti, but also other developing countries in the Global South, being a mixture of hierarchical, moderately collaborative, and somewhat integrated management.<sup>46</sup>

Against this were a number of constabulary maritime security concerns beyond the suppression of piracy and armed robbery against ships, including tackling Illegal, Unregulated and Unreported (IUU) fishing and the illicit movement of people, goods and weapons. According to estimates by Fish-I-Africa, IUU fishing, for example, accounts for up to one in four fish caught off African coasts,<sup>47</sup> whereas Kenya loses up to an estimated US\$100 million annually from illegal fishing.<sup>48</sup> Much of these issues are closely linked to port security issues at the interface between the land and sea. As Blédé outlines, despite their strategic importance, many African ports are easily accessible to criminals and susceptible to various threats including illegal migration, piracy and armed robbery, drug trafficking and theft of goods.<sup>49</sup> Therefore, the effective governance of coastal zones and security of port facilities are often key to managing such challenges as smuggling, robbery and corruption.<sup>50</sup>

### ***Coastguard vs. Navy***

There are many reasons why states might choose to develop a separate Coastguard service. In the case of Kenya, constitutional and political factors prevented naval forces from enforcing maritime laws or investigating crimes.<sup>51</sup> Whereas in Djibouti, the Coastguard functions primarily as paramilitary arm of civilian institutions with diverse responsibilities relating to issues like the protection of maritime commerce, search and rescue and port security.<sup>52</sup> An important Coastguard function is therefore to keep the military removed from questions of domestic and international politics, drawing the same distinction that most countries maintain onshore between military and civil police.<sup>53</sup> Moreover, as Vogel highlights, traditional naval operations represent only a “small fraction of the commitments African security forces must meet”.<sup>54</sup> A much larger part of their mission set is “coastguard in nature and relates to law enforcement, environmental protection, and maritime safety obligations that occur within a nation’s territorial waters and EEZ”.<sup>55</sup>

In terms of enforcement, the Coastguard is the main constabulary maritime institution in Djibouti. It was established in 2010 by requisitioning members from the Maritime Police and has limited physical assets as well as a small number of personnel.<sup>56</sup> The fleet includes six Zodiac and Avon type fast launches, one landing craft (donated by France in 2012) and two coastal patrol boats donated by the United States in April 2013.<sup>57</sup> Djibouti maintains a largely symbolic navy with minimal physical assets and a small staff. The state informally relies on the presence of external powers to maintain security in its territorial waters. The Djibouti Navy and Coastguard work closely with the US Navy, for example, in developing capacity for Visit, Board, Search and Seizure (VBSS) procedures in particular, which is important in countering the illicit Trafficking in Persons and Smuggling of Migrants through Djiboutian waters.<sup>58</sup> Given its geostrategic location at the entrance to the Gulf of Aden, Djibouti is a core transit point for regional smuggling routes and irregular migration via the so-called eastern route from the Horn and East Africa via Djibouti, Puntland and Yemen to the Gulf countries, and the southern route from the Horn and East Africa towards South Africa.<sup>59</sup>

In addition, Djibouti frequently conducts joint patrols with partners by immersing a team from the Djiboutian Navy with foreign navies patrolling its territorial waters against illegal trade and fisheries crime amongst others offences. IUU fishing, alongside the illicit movement of people

and goods, is a core constabulary maritime issue for Djibouti with significant illegal foreign artisanal fishing, mostly by Yemenite fishing units, operating in the northern and southern areas of Djiboutian waters.<sup>60</sup> Since 2010, however, the Coastguard has been particularly effective in curbing IUU fishing, with some reports suggesting a decrease of 80 percent.<sup>61</sup> It is estimated that about 1,500 fishing units are arrested on average each year and about 100 boats have been seized between 2010 and 2013.<sup>62</sup> Apart from the Coastguard, the Director of Marine Affairs is responsible for the registration of vessels and issues relating to safety at sea, and the Navy also participates in fisheries monitoring, control and surveillance operations.<sup>63</sup>

### *Navigating public/private partnerships*

In a unique way for the region, Djibouti has delegated some of its coastal maritime enforcement authority to a private company called Djibouti Maritime Security Services or DMSS under the supervision of the Office of the Director of National Security.<sup>64</sup> This is in contrast to Kenya, where the movement of privately held weapons in its waters is strictly controlled by national enforcement agencies. The rationale for this mutually beneficial relationship in Djibouti is likely designed to relieve pressure on the weak institutional capacity of the Coastguard and Navy.

In practice, the arrangement in Djibouti means all private armed maritime security companies operating within or transiting through the territorial waters of Djibouti submit their request to DMSS, which then handles all privately held weapons for the duration of their transit. Article 3 of a Presidential Decree dated 12 February 2009 permits DMSS to: (i) control and authorise the temporary transit of weapons on the national territory (ii) escort naval forces, police officers and national coastguards as far as the limit of the territorial waters (iii) provide boats, temporary visas and permits for rental or storage of weapons and (iv) control communication systems.<sup>65</sup> DMSS also operates a fast supply vessel that allows it to go to sea to retrieve weapons from returning ships before they move on to other ports that do not permit entry to privately armed personnel.<sup>66</sup> In addition, a gun-rental scheme was also operationalised whereby merchant ships relying on PMSCs can rent arms and take them on board for a fee.<sup>67</sup>

The security of Djibouti's lucrative and dynamic port sector is managed by a company called Port Secure Djibouti (PSD) under the oversight of the Port Safety Department. It operates to the Dubai based DP World "corporate safety policy standards", which is indicative of external,

private commercial influence in Djibouti's coastal affairs and maritime security governance.<sup>68</sup> PSD undertake both patrol and monitoring activities including stowaway prevention, individual ship protection, safety and distress cover, and combined land/ sea tasking.<sup>69</sup> In February 2007, a new internal operational department was created called the Boat Patrol Detachment to serve as a maritime patrolling arm to support shore based port security activities.<sup>70</sup> PSD also conduct practical and classroom training programmes under a 'security administration and documentation' educational programme to "maintain a higher understanding of more in depth administration processes".<sup>71</sup>

These semi formalised, sometimes ad-hoc and largely experimental approaches, are reflective more generally of the changing nature of the relationship between the state and private actors in terms of maritime constabulary governance and may be transferable to other theatres where maritime threats, such as piracy and armed robbery against shipping, remains prevalent. According to Petrig, "the proliferation of rules governing the use of private security on board merchant ships will not reduce the difficulty of discerning the applicable law(s) and the array of differing approaches to the powers of PMSC personnel and to the issue of arms which they contain".<sup>72</sup>

Arrangements in Djibouti mirror to some extent other public/private partnerships in different African maritime security contexts. While the provision of private maritime security services in the Gulf of Guinea, for example, is handled more closely by West African states than by those in the Horn of Africa, the mixture of "commercially-tinged activities" with maritime policing tasks runs the risk of "abuse, mismanagement and corruption".<sup>73</sup> Despite this, these type of public/private partnerships have the potential to be replicated and formalised, therefore alleviating pressure on limited littoral navies and coastguards. Such partnerships can also help ameliorate sensitivities over formal external state naval involvement in national maritime security issues, which, in contrast to the Horn of Africa, there is currently no mandate for in the Gulf of Guinea.<sup>74</sup>

Unlike Djibouti, Kenya strictly controls the passage of privately held weapons through its waters and all coastal governance and enforcement activity related to this is carried out by designated

state run agencies with no private companies involved in logistics, monitoring or enforcement. In practice, PCASP declare firearms to Kenyan coastal authorities before they enter Kenyan territorial waters. Kenyan security agencies then board the vessel to take charge of these arms, store them in an armoury and release them back to the personnel when the vessel is leaving. Therefore, these personnel remain unarmed for the duration of their transit through Kenyan territorial waters in line with Kenyan legislation.<sup>75</sup>

### ***Beyond a Navy first approach***

In 2005, when incidents of Somali piracy began to escalate, the Kenya Navy was one of the best equipped in the Horn of Africa. Despite this, it lacked the capability to effectively patrol and monitor its waters against the threat of piracy and other maritime crimes. At that time, it comprised of two fast attack craft, two ocean patrol vessels, two logistic ships and six riverine patrol boats as well as a Maritime Surveillance Radar, which was established in 1991.<sup>76</sup> As of January 2018, the Kenyan Navy had seven warships and twelve counter-terrorism speedboats as part of the Special Boat Unit. Despite recent procurements, such as the donation of six 4.7 metre-long rigid inflatable boats by the United States in 2015 to boost maritime security capabilities in coastal waters<sup>77</sup>, the Kenya Navy is still to some degree constrained by bureaucratic procedure as it patrols on request to a specific situation rather than as a mandatory function, due to a combination of a large EEZ and a lack of surveillance vessels to police and monitor.<sup>78</sup>

Until 2018, the Navy was the primary agency responsible for maritime enforcement supported by a small Maritime Police force, while other agencies also possessed limited maritime assets. For example, the Kenyan Maritime Authority (KMA), which is the central agency for regulation and oversight of the maritime industry, has two small boats for localised tasks in harbour. The KMA has oversight of the maritime industry and therefore, the private and civilian aspects of the maritime sector. On the operational side, the KMA is dependent on units from the Kenya Navy and Port Authority in case of maritime emergencies such as Search and Rescue. The KMA and Kenya Navy maintain a good working relationship and in 2018, centralised KMA Automatic Identification System (AIS) base stations with Kenyan Navy radar stations.<sup>79</sup>



Additional coastal monitoring is conducted through a “community based management approach” via Beach Management Units (BMU).<sup>80</sup> BMUs are primarily responsible for managing fish landing sites as well as providing data on catches and developing sustainable co-management plans for fisheries. By creating a coastal governance partnership between officials and the artisanal fisher community, BMUs “allow the knowledge and understanding of all stakeholders to be reflected in the decision-making process and their diverse capacities to be harnessed in implementation.”<sup>81</sup> Despite this, the actual enforcement power of the BMUs is minimal. According to a report published by the Indian Ocean Commission, “the BMUs failed to have an enforcement mechanism and lacked powers to arrest, though there was sometimes assistance from the Fisheries Department and other government agencies such as Kenya Wildlife Service”.<sup>82</sup>

In addition to the KMA, other governmental agencies that are directly involved in coastal governance include the National Environmental Management Authority; Kenya Defence Forces, Kenya Ports Authority, Kenya Police, Kenya Wildlife Service, Coastal Development Authority, the State Department for Fisheries and the Blue Economy (under the Ministry of Agriculture, Livestock and Fisheries); State Department for Maritime and Shipping Affairs (under the Ministry of Transport, Infrastructure, Housing and Urban Development); Kenya Marine Fisheries Research Institute, and the Office of the President. With such diverse agendas collaborating, governance of Kenya’s coastal zone has been described as a “patchwork of approaches” including customary management, hierarchical governance, and integrated coastal area management; management tools including marine protected areas, fisheries regulations, licensing, and environmental impact assessment; and initiatives including infrastructure development, investment in fishing technologies, ecotourism ventures, and others.<sup>83</sup>

### ***The Kenya Coast Guard Service and the Blue Economy Implementation Committee***

Recognising weaknesses in Kenya’s coastal governance capability, in April 2016 the government indicated that existing agencies such as the Navy, Police Service, Ports Authority, Kenya Wildlife Service and Kenya Revenue Authority would boost coordination to promote a “whole-of-government approach” to maritime security.<sup>84</sup> In 2017, the Blue Economy Implementation Committee was established by Kenyan President Uhuru Kenyatta and headed by the Chief of

Kenya's Defence Forces General Samson Mwathethe. The primary aim of the committee was to coordinate marine investments while also advising the government on appropriate policies to boost earnings from blue economic activity.<sup>85</sup> A key reform proposed by the Blue Economy Implementation Committee was the creation of a Coastguard. These developments illustrated a move beyond 'seablindness' and recognition at the highest levels of government of the importance of a secure and policed coastal jurisdiction to build maritime security and harness the ocean economy.

The Kenyan Coast Guard Bill was subsequently approved by parliament in September 2017. The Bill aimed to establish a Coastguard Service to perform maritime law-enforcement and was informed by the fact that Kenya did not have a specialised or centralised law-enforcement agency to deal with different maritime criminal issues. As previously discussed, the Kenya Navy supported by a small Maritime Police Force, has traditionally taken the lead in this role, despite lacking the requisite legal or operational capability for law enforcement operations in territorial waters. The Coast Guard bill outlined that the Kenyan Coast Guard would have the power to arrest and prosecute maritime offenders provided that the arrested person(s) be handed over to the National Police Service.<sup>86</sup>

The Kenya Coast Guard Service (KCGS) was subsequently launched by the Kenyan President in November 2018 and is currently headquartered in Mombasa. The new service comprises of one surveillance vessel, and personnel from the police, army, intelligence services and civilian professionals seconded from the Public Service Commission.<sup>87</sup> It assumes responsibility for enforcing maritime security and safety, pollution control and sanitation measures as well as the arrest and prosecution of offenders and the protection of maritime resources including fisheries.<sup>88</sup> Specific areas under the KCGS remit include illegal and unregulated fishing, border disputes, piracy, human and drug trafficking, illicit smuggling of contraband and goods, degradation of the marine ecosystems through discharge of oil or dumping of toxic waste, sand harvesting and destruction of coral reefs.<sup>89</sup> In practice, activities will likely include coastal patrolling, trans-border intelligence and information gathering and sharing and interdicting suspect vessels to check licenses etc.

The establishment of the KCGS exemplifies the linkage between sustainable blue economic development and constabulary maritime governance, particular in the context of the estimated KSh10 billion in revenue lost annually due to illegal and criminal activities at sea in Kenya.<sup>90</sup> As Kenyan President Uhuru Kenyatta commented, “Maritime security forms the backbone of the Blue Economy”<sup>91</sup> and “The Coast Guard will ensure that our ocean will not be used for drug and human trafficking and illegal fishing...It will guard against exploitation of our natural resources by foreign countries and ensure that no foreign vessel will steal our fish”.<sup>92</sup>

It has been shown how phenomena of piracy influenced the development of coastal governance in both Djibouti and Kenya and how this led to innovative public/private partnerships, revision of national laws and the formation of new organizations and policies. In addition, the relevance of some of these practices have been considered within the context of other African maritime jurisdictions. To develop these various capabilities, systems and new constabulary governance approaches, capacity building assistance has been provided by international actors to varying degrees in both countries, initially as part of a more sustainable solution to the issue of piracy. Since 2012, and following a decline in hijackings, these projects have expanded to incorporate a wider range of maritime security concerns, including building capacities to address illegal fishing, trafficking at sea, and marine resource protection, management and development.

### **The impact of international capacity building on coastal governance**

Maritime capacity building is a relatively novel activity with several innovative processes and mechanisms created. The western Indian Ocean region has become a unique testing ground for many of these innovations. They range from epistemic technologies and practices relating to MDA and information sharing to integrating the interests and activities of private actors (including marine transport, fishing and tourist industries) with governmental agencies (including maritime police, coastguards and naval forces).<sup>93</sup> As previously mentioned, after a decline in piracy attacks around 2012, the ambitions and objectives of international capacity building projects have increasingly extended beyond explicitly addressing piracy. In this post-piracy phase, they have expanded to build capacities to tackle other transnational organized crimes committed at sea, as a basis for the sustainable development of the maritime sector.<sup>94</sup> At a constabulary level, this focused primarily on building coastal patrol capability, enhancing the

judicial and legal capacity to prosecute and imprison suspected maritime criminals and training and equipment provision to enhance MDA. While Djibouti and Kenya have benefited from external capacity building in different ways and to different degrees, the sustainability and ownership of the projects, technologies and innovations is disputed. This means that both countries, as well as other regional states, can become hampered by their “dependence upon the poorly matched foreign equipment they purchase or are given”.<sup>95</sup>

### ***High and low tech***

In Kenya, the UN Office on Drugs and Crime’s (UNODC) Global Maritime Crime Programme, for example, has provided assistance for enhancing the operational capacity of the Maritime Police Unit through specialised law enforcement training programmes. This focuses on mentoring in practical and core skills such as seamanship, maritime policing, and engineering by experts embedded within maritime law enforcement authorities.<sup>96</sup> In addition, specialised training is offered related to specific maritime crimes, such as narcotic smuggling and human trafficking, alongside practical exercises in VBSS techniques at sea.

In terms of training, the International Maritime Organization (IMO) has also helped bolster Kenya’s coastal governance capability through maritime security table-top exercises with officials from key Kenyan ministries and departments. These focus on building national capacity to perform coastguard functions and promote an integrated governance approach to maritime law enforcement.<sup>97</sup> It has also led scenario-based simulation exercises, mentorship and practical training for operators from the Regional Maritime Rescue Coordination Centre (RMRCC) in Mombasa and for the Kenyan Navy.

More impactful than multilateral capacity building initiatives, which have suffered from issues of sustainability as previously suggested, have been bilateral relationships in both Kenya and Djibouti. In this regard, Kenya works with several national governments on a bilateral basis including China, Denmark, and the United States. Denmark in particular has provided capacity building support for the Kenyan Navy through training and education programmes as well as technical support for maintenance facilities and the provision of spare parts, which has helped to

increase the navy's coastal patrol capability. This relationship has developed to the point where the Kenyan Navy is modelling aspects of its organisation on the Danish Navy model.<sup>98</sup>

As previously mentioned, Kenya recognised the need for an accurate maritime situational picture to effectively police its coastal regions and ports in the wake of increased piracy activity after 2005. A key enabler for this was the creation of a centralised and trusted focal point that could receive, scrutinise and disseminate accurate information on illicit movements and criminal activity in coastal areas. This led to the establishment of the 24-hour manned Regional Maritime Rescue Coordination Centre in 2008. The RMRCC plays an important role in constabulary maritime activities through, for example, liaising with the maritime police to assist in the location of vessels engaged in IUU fishing and coordinating search and rescue operations.<sup>99</sup> It does not however possess an enforcement capacity and instead it receives, acknowledges and relays notifications to the relevant authorities.<sup>100</sup>

The centre utilises a combination of technology and human intelligence sources to generate a working picture of activities in the maritime domain. Fisher communities, for example, provide important information and human intelligence to the centre. Reporting by coastal community actors is encouraged through a number of methods including the introduction of a 'toll free' line and the provision of emergency training on safety procedures on board small vessels, the correct use of lifejackets and tsunami warnings among others.<sup>101</sup> As outlined in Bueger et al. 'Mastering Maritime Security: Reflexive Capacity Building and the Western Indian Ocean Experience', human dimensions and analytical capacities are vital aspects of MDA, which is often primarily understood as a high-tech challenge of installing and integrating sensors such as radar stations.<sup>102</sup> It requires the right mix between high and low tech.<sup>103</sup>

Complementing the "low-tech" information gathered through human sources, the RMRCC also utilises high-tech systems such as the EU funded 'Mercury' system and the US funded 'Sea-vasion' system. These provide a real time satellite picture of vessel movement and a direct line of communication with multinational naval assets in the western Indian Ocean. In addition to part funding the Mercury system, the EU civilian capacity building mission CRIMARIO has delivered several training courses for Kenyan maritime agencies to enhance Maritime Situational

Awareness. In November 2017, for example, EU CRIMARIO delivered a training course on PELAGUS software, aimed at managing a National AIS network to specialists from three of Kenya's main maritime agencies: the KMA, Kenya Ports Authority and Kenya Navy.<sup>104</sup>

### *Capacity by proxy?*

While Kenya has capitalised on external assistance directed at its maritime sector specifically, in contrast, most of the economy and maritime security apparatus of the Djiboutian states is bolstered by various bilateral relationships and agreements with major international partners. However, maritime capacity building in Djibouti is a relatively recent activity with the majority of activities taking place since 2010. Unlike other western Indian Ocean states, like Kenya and the Seychelles, this has been conducted on a mainly ad-hoc basis, without formal programmes and consists primarily of short-term training courses and technical assistance programmes. It has had a positive impact in strengthening pockets of capacity in specific organisations and institutions, but overall the success has been limited as Djibouti's maritime security sector is still heavily reliant on external assistance.

Djibouti's unique position as a base for Chinese, US, and Japanese armed forces as well as regularly hosting vessels from other international navies including Germany, India, Spain and the United Kingdom, means that it enjoys a relatively well policed and secure coastal area by proxy. While not a mandated role, this large assortment of international naval assets likely act as a deterrent to illicit activity simply by their presence in the first instance. Despite this, there is a risk of the state "surrendering [itself] once again into a highly dependent relationship with the foreign powers".<sup>105</sup> In a move to build future self-sustainability, the Djiboutian government launched a strategy called "Djibouti Vision 2035" in 2014 with a view to establish the state as a regional hub for trade and commerce and improve governance, human capital and regional integration.<sup>106</sup> Currently, much of the investment comes from the relationship with foreign states and lacks sustainable development policies and strategies. For example, tourism is primarily driven by business travel, which remains highly dependent on the presence of foreign military bases and operations against piracy in the Horn of Africa.<sup>107</sup>

While the sustainability of development strategies linked to the presence of these multinational forces is questionable, their proximity has resulted in the provision of ancillary capacity building assistance. While this has not been transformative in terms of reforming Djibouti's maritime security sector or building a self-sustaining and resilient coastguard or navy, for example, it has had some limited impact. France, for example, has reinforced Djibouti's coastal defences and maritime surveillance through technical cooperation and the provision of fast coastal patrol boats.<sup>108</sup> Japan constructed and delivered two 20-meter patrol boats for the Djibouti Coastguard through a Japanese government development assistance grant in 2015.<sup>109</sup> The US Coastguard training team has also conducted information exchange and exercises with Djiboutian Coastguard and Navy personnel primarily focused on VBSS on small boats, medical training, and close-quarter combat.<sup>110</sup>

China has been the foremost foreign entity that has contributed to building the capacity for the development of Djibouti's maritime sector, mainly through infrastructure construction projects and capital investment. Chinese firms provide nearly 40 percent (US\$1.4 billion) of funding for Djibouti's major investment projects and, moreover, Chinese state-owned firms have built some of Djibouti's largest - and potentially most transformative - maritime related infrastructure projects.<sup>111</sup> These include the Doraleh Multipurpose Port, a new railway connection between Djibouti and Addis Ababa and the opening of China's first foreign military facility.

## **Conclusion**

This research has attempted to shed new light on the limitations and challenges facing domestic maritime security sectors in Africa, but also highlight the new ways states can improve and build maritime constabulary governance through international partnerships, capacity development and embracing the blue economic agenda using the cases of Djibouti and Kenya as archetypal models. The upsurge in maritime piracy refocused regional states attention in the Horn of Africa toward the maritime domain as both an arena of risk but also one of new economic opportunity. Capacity building assistance provided a prospect for littoral states to bolster indigenous maritime security sectors and enhance constabulary governance and enforcement capabilities. In Kenya, the creation of a new Coastguard Service, new naval training partnerships, maritime capacity building projects, and the creation of a blue economic coordination committee is evidence of a

fundamental shift toward building a more secure and sustainable domestic maritime sector. In a similar way, in Djibouti, the rapid development of its maritime sector and recognition of the financial benefits from leasing marine spaces and infrastructure has resulted in an ambitious development plan titled “Djibouti Vision 2035”, which articulates its aspiration to become a multi-modal maritime hub and become the “Singapore of Africa”.<sup>112</sup> All of these innovations, in particular development of the blue growth agenda and increased maritime trade, require a strong constabulary governance regime but also a capable and flexible capacity to enforce regulations and laws and secure territorial waters.

A key lesson that can be drawn for other regions of Africa facing similar maritime insecurities, particularly the recent upsurge of piracy and armed robbery against shipping in the Gulf of Guinea<sup>113</sup>, is the need to convince coastal states with weak capacities of the untapped potential of the blue economy for sustainable growth and development. Even proxy reputational damage can severely impact on tourism, development and investment in coastal regions as illustrated in case of Kenya. Blue economic growth - and the potential transformative impact - cannot be realised without a safe and secure maritime environment for merchant shipping. Adoption of this agenda can also help alleviate disenfranchisement and poverty in coastal regions and provide potential criminals with alternative employment options. Two of the central tenants of the Djibouti Vision 2035 strategy, for example, are promoting competitive and healthy economic growth and investing in human capital.<sup>114</sup> Ultimately, maritime security and blue economic growth need to be considered together and embraced at a policy level.



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